



USAID | **LEBANON**
FROM THE AMERICAN PEOPLE

DRAFT LAW AMENDING THE LAW ON LITERARY AND ARTISTIC PROPERTY OF LEBANON NO.75 OF APRIL, 3, 1999 AND ITS EXPLANATORY MEMORANDUM

AS PROPOSED BY EXPERT MICHAEL SCHLENSINGER

SUPPORT FOR LEBANON'S ACCESSION TO THE WORLD TRADE
ORGANIZATION (WTO) PROJECT
FROM BOOZ ALLEN HAMILTON
TO USAID

<02-17-2011>

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SECTION I

DRAFT LAW AMENDING THE LAW ON THE PROTECTION OF LITERARY AND ARTISTIC PROPERTY, NO. 75 OF APRIL 3, 1999

Article I: Article I of Law No. 75/99 shall be amended as follows:

- a. The definition of “Performers” shall be added at the top of the Article following the first full paragraph:

“Performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore.

- b. The definition of “Performance of work” shall be deleted.
- c. The definition of “Public performance” shall be amended as follows:

“Public performance” means ~~a singing, recitation, playing, dancing, or other performance, the showing of images in sequence and/or the making of sounds audible,~~ which is given in a place or places where the number of persons present exceeds the members of one family and their direct acquaintances.

- d. The definition of “Broadcasting” shall be amended as follows:

“Broadcasting” means the transmission to the public of the work or object of related rights ~~for public reception by wireless means including transmission by or satellite of sounds or sounds and images, or representations thereof, including transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; “broadcasting” does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public.~~

- e. The definition of “Computer program” shall be deleted.
- f. The definition of “Phonogram/sound recording” shall be amended as follows:

“Phonogram/sound recording” means every fixation ~~by any physical means of the sounds of a performance or of other sounds, whether resulting from the performance of a work or not,~~ other than a fixation incorporated in an audiovisual work.

- g. The definition of “Fixation” shall be added after the definition of “Phonogram/sound recording”:

“Fixation” means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

- h. The definition of “Related rights” shall be amended as follows:

“Related rights” means the rights that performers, producers of phonograms **or audiovisual works**, television and radio broadcasting organizations and publishing houses enjoy.

- i. The definition of “Producer of sound recording/phonogram or audiovisual work” shall be amended as follows:

“Producer of sound recording/phonogram or audiovisual work” means the natural person who, or legal entity which, takes the initiative and responsibility for **the first fixation of the sounds of a performance or other sounds, or the representation of sounds, or for** producing the audiovisual work, **respectively or recording/phonogram.**

- j. The definition of “Reproduction” shall be amended as follows:

“Reproduction” means making one or more copies of any work **or object of related rights** by any means or in any form, including a permanent or temporary **storage of the work or object of related rights, and including** recording on phonogram records, tapes, disks, electronic memory, and this also includes issuing a copy in two dimensions of a three-dimensional work, or a copy in three dimensions of a two-dimensional work.

- k. The definition of “Copy” shall be amended as follows:

“Copy” means the product of any copying, recording, printing, or photocopying of the original work **or object of related rights**.

- l. The first paragraph of the definition of “Publication” shall be amended as follows:

“Publication” means making copies of the work or ~~of the~~ sound recording/phonogram available to the public in reasonable quantities with the consent of the author or the producer of the sound recording/phonogram **or audiovisual work**, by means of selling, renting, or any other means of property transfer or acquisition of a copy of the work, **fixed performance,** ~~or the sound recording/phonogram or of the right to use them.~~

The second paragraph (sentence) of the definition of “Publication” shall be deleted.

The fourth paragraph (sentence) of the definition of “Publication” shall be amended as follows:

A **performance or** sound recording/phonogram is not considered published if received by any device, or means or if broadcast.

- m. The definition of “Communication to the public” shall be amended as follows:

“Communication to the public” means any communication to the public of a work, performance, phonogram, sounds and/or images, or the representations of sounds fixed in a phonogram, by wire or wireless means, including making the work, performance, phonogram, sounds and/or images, or the representations of sounds fixed in a phonogram available to the public by wire or wireless transmission of sounds and/or images, in such a way as to allow the public to access, hear or view the work at a distance from the broadcasting center time and from a place individually chosen by them.

The second paragraph (sentence) of the definition of “Communication to the public” shall be deleted.

- n. The definition of “Technological protection measure” shall be added after the definition of “Communication to the public”:

“Technological protection measure” means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any related rights.

- o. The definition of “Rights management information” shall be added after the definition of “Technological protection measure”:

“Rights management information” means voluntarily developed and deployed: information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance, or the producer of the phonogram, or the owner of any right in the work, performance, or phonogram; information about the terms and conditions of the use of the work, performance, or phonogram; or numbers or codes that represent such information, when attached to a copy of, or appearing in connection with the communication or making available to the public of, a work, performance, or phonogram.

ARTICLE 2: Article 2 of Law No. 75/99 shall be amended as follows:

- a. After “illustrations and drawings related to architecture” the bullet “computer programs” shall be amended as follows:
- computer programs, **which shall be protected as literary works,** whatever **may be** their **mode or form of expression** or language and including preliminary work;
- b. After “maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science” the bullet “any kind of plastic art work” shall be amended as follows:

- any kind of plastic or applied art work whether utilitarian or incorporated into a useful article, or whether intended for industry or not;

c. After “any kind of plastic...” the following bullet shall be added:

– works of architecture.

ARTICLE 3: In Article 3 of Law No. 75/99, the second bullet shall be amended as follows:

- collections of literary or artistic works and compilations of data or other material, whether in machine-readable or any other form, provided that ~~they are authorized by the copyright holder or his public or private successors and that~~ by reason of the selection and arrangement of their contents they constitute intellectual creations.

ARTICLE 4: In Article 4 of Law No. 75/99, the fourth bullet shall be amended as follows:

- speeches delivered in political ~~public~~-assemblies and meetings or part of legal proceedings. The authors of such speeches and presentations shall enjoy the sole right of collecting and publishing such lectures and presentations;

ARTICLE 5: The title to Chapter III of Law No. 75/99 shall be amended as follows:

Copyright Holder and Terms of Protection

ARTICLE 6: The second paragraph (third sentence) of Article 6 of Law No. 75/99 shall be amended as follows, using one of the following options:

[OPTION A]

In a joint work, none of the coauthors may, in the absence of any written agreement to the contrary, unreasonably object to the exercise of copyright without the consent of by the other authors subject to a duty to account to the other authors for any profits received from the exercise or licensing of the joint work.

[OPTION B]

In a joint work where each contribution consists of an integral part of the work as a whole, none of the coauthors may, in the absence of any written agreement to the contrary, exercise copyright without the consent of the other authors provided that such consent shall not be unreasonably withheld.

ARTICLE 7: Article II of Law No. 75/99 shall be amended as follows:

The person whose name is shown as the author on a ~~literary or artistic work~~ in the commonly known way shall, unless proved otherwise, be presumed ~~considered~~ the author. This provision shall be applicable even if the name is a

pseudonym, where the pseudonym leaves no doubt as to the identity of the author. In the case of an anonymous or pseudonymous work, and subject to the previous sentence, the publisher whose name appears on the work, shall, in the absence of proof to the contrary, be presumed as entitled to exercise and enforce the rights of the author. This presumption shall cease to apply when the author reveals his identity. In all cases, in the absence of proof to the contrary, copyright shall be presumed to subsist in a work.

Article 8: Article 12 of Law No. 75/99 shall be amended as follows:

The protection of this Law shall apply to the ~~artistic and literary~~ works, **whether published or not,** of the following:

- Lebanese authors, wherever they reside;
- non-Lebanese authors who are nationals of, or resident in, a State party to the Berne Convention for the Protection of Literary and Artistic Works, **the WIPO Copyright Treaty** or the Universal Copyright Convention;
- authors who are nationals of any State that is a member of the Arab League but which is not party to the above-mentioned Conventions, provided reciprocal treatment is applied;
- producers of audiovisual works who have their headquarters or habitual residence in Lebanon or in any State party to the Berne Convention for the Protection of Literary and Artistic Works, **the WIPO Copyright Treaty** or the Universal Copyright Convention;
- **authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.**

Article 9: Article 13 of Law No. 75/99 shall be amended as follows:

The protection of this Law shall apply to:

- ~~literary and artistic~~ works first published in Lebanon;
- ~~literary and artistic~~ works first published in a State party to one of the above-mentioned **Treaties or** Conventions;
- ~~literary and artistic~~ works first published outside Lebanon and outside the States party to one of the above-mentioned **Treaties or** Conventions, provided that they are published in Lebanon or in a State party to the above-mentioned **Treaties or** Conventions within 30 days of their publication in the other country;

- works that are eligible for protection in Lebanon by virtue of and in accordance with any international convention or other international agreement to which Lebanon is party.

ARTICLE 10: Article 15 of Law No. 75/99 shall be amended as follows:

- a. The chapeau shall be amended as follows:

The copyright holder shall have the exclusive right to exploit the work commercially and, accordingly, shall have the right to authorize or prohibit the following:

- b. After “communication to the public of the work” a “;” shall be added and following that a new bullet shall be added as follows:
 - broadcast of the work by wire or wireless means, whether through hertzian waves or the like or through coded or uncoded satellites, including the rebroadcast of normal television or radio broadcasts or satellite transmissions by any means of diffusion of sounds and images.

ARTICLE 11: The third sentence of Article 17 of Law No. 75/99 shall be amended as follows and the fourth sentence shall be deleted:

The assignee shall undertake by such contract to endeavor~~shall also require~~ that the author gets a percentage of the exploitation revenues and assignment proceeds or a lump sum.

ARTICLE 12: Article 18 of Law No. 75/99 shall be amended as follows:

The assignment in whole of all future works shall be considered as void.

ARTICLE 13: Article 19 of Law No. 75/99 shall be amended as follows:

The assignment by the author of any of his rights must be limited in all cases to the ~~at~~ rights enumerated only and copyright contracts shall be construed in a restrictive manner.

ARTICLE 14: Article 20 of Law No. 75/99 shall be amended as follows:

The author of lyrics and composer of a song in which each contribution consists of an integral part of the work as a whole shall be considered joint authors ~~having~~ equal rights in that work, unless agreed otherwise.

ARTICLE 15: Article 21 of Law No. 75/99 shall be amended as follows:

- a. The second bullet shall be amended as follows:
 - the right to claim authorship of the work ~~and to have his name mentioned on every copy of the work each time the work is used in public;~~

- b. The fourth bullet shall be amended as follows:
 - the right to object to any distortion, mutilation or modification of the work which would be prejudicial to his honor or; reputation, ~~fame or artistic, literary or scientific position~~;
- c. The fifth bullet shall be deleted (with the full stop joining the fourth bullet).

ARTICLE 16: Article 23 of Law No. 75/99 shall be amended as follows:

Without prejudice to the provisions of Article 24 of this Law, any natural person may, for his personal and private use, copy, record or make a single copy of any work protected under this Law without the authorization or consent of the copyright holder, on condition that the copyright holder receives fair compensation which takes account of the application or non-application of technological protection measures referred to in Articles I and 84A to the work or object of related rights and without having to pay him any compensation, and further provided that the work has been legally published, is made from a lawful source, and that such copy does not otherwise conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the right holder.

The use of a copy copied or reproduced inside a company or at any other work place or for commercial advantage or private financial gain shall not be considered as personal and private use.

ARTICLE 17: Article 24 of Law No. 75/99 shall be amended as follows:

- a. The chapeau shall be amended as follows:

The exception provided for in the previous Article shall not apply if it conflicts with a normal exploitation of the work or is prejudicial to the other rights and interests of the copyright holder. In particular, it shall be prohibited to:

- b. The fifth bullet shall be amended as follows:
 - record or copy computer programs unless the record or copy is made by the person authorized by the copyright holder to use the program and for the purpose of making a single copy for use in the case of loss or damage of the original copy, and provided that upon ceasing to be authorized by the copyright owner, the copy is destroyed.

ARTICLE 18: The first paragraph (sentence) of Article 25 of Law No. 75/99 shall be deleted. The second paragraph of Article 25 of Law No. 75/99 shall be amended as follows:

It shall ~~also~~ be permitted, without the authorization of the author and without obligation to pay him compensation, to use a limited part of any legally published work for purposes of criticism, argumentation or citation or for an educational purpose, provided that the part used does not exceed what is necessary and

customary. However, the name of the author and the source shall always be indicated, if the name of the author is included in the work.

ARTICLE 19: The second bullet of Article 32 of Law No. 75/99 shall be amended as follows:

- activities carried out by educational institutions during which teachers or students use the work, provided that the audience is limited to the teachers, students, students' parents and persons directly involved in the activities of the said educational institution, **and that no indirect or direct admission fee is charged.**

ARTICLE 20: Article 35 of Law No. 75/99 shall be amended as follows:

Producers of sound recordings, radio and television broadcasting organizations, publishing houses and performers ~~such as actors, musicians, singers, members of musical groups, dancers, artists of puppet shows and circus artists~~ shall be considered as holders of related rights. **The provisions of Article 11 shall apply, mutatis mutandis, to the owners of and objects of related rights.**

ARTICLE 21: Article 36 of Law No. 75/99 shall be amended as follows:

Producers of sound recordings shall enjoy protection in the following cases:

- a. if the producer of the sound recording is Lebanese or a national of a State party to the Rome Convention 1961—International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961, **the WIPO Performances and Phonograms Treaty (WPPT), or any international convention or other international agreement to which Lebanon is party;**
- b. if the first fixation of sound is undertaken in **Lebanon or in** a State party to the above-mentioned Conventions **or Treaties;**
- c. if the sound recording is first published in **Lebanon or in** a State party to the above-mentioned Conventions **or Treaties.**

If the sound recording is first published in a country that is not party to the Rome Convention **or the WPPT** and published afterwards, within 30 days of the first publication, in a State that is party to the said Convention **or Treaty,** the said sound recording shall be considered as first published in the State party to the Convention **or Treaty;**

- d. **if the producer of phonograms is otherwise eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Lebanon is party.**

ARTICLE 22: Article 37 of Law No. 75/99 shall be amended as follows:

Performers shall enjoy protection in the following cases:

- a. if the performer is Lebanese or a national of a State party to the Rome Convention, the WIPO Performances and Phonograms Treaty (WPPT), or any international convention or other international agreement to which Lebanon is party;
- b. when their performance is undertaken in Lebanon or in a State party to the Rome Convention, the WIPO Performances and Phonograms Treaty (WPPT), or any international convention or other international agreement to which Lebanon is party;
- ~~b.c.~~ when their performance is fixed in a sound recording protected under Article 36 of this Law;
- ~~c.d~~ when their unfixed performance is fixed in a sound recording through a program protected under Article 38 of this Law;
- e. if the performer is otherwise eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Lebanon is party.

ARTICLE 23: Article 38 of Law No. 75/99 shall be amended by adding a “;” at the end of clause (b) and by adding a new clause (c) as follows:

c. if the broadcasting organization is otherwise eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Lebanon is party.

ARTICLE 24: Article 39 of Law No. 75/99 shall be amended as follows:

Without prejudice to the provisions of Article 15 of this Law, performers shall have the right to authorize or prohibit the following:

– the broadcasting or communication to the public of their ~~unfixed~~ performance unless the broadcasting or communication is a rebroadcast of a previously authorized broadcast, including making available to the public of their performance, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

– the fixation or recording of their unfixed performance, or the reproduction of such fixation ~~on any tangible material;~~

– the direct or indirect reproduction in any manner or form, copying, sale, ~~or rental,~~ or other transfer of ownership of any recordings containing an unauthorized fixation of their performance;

ARTICLE 25: The second bullet of Article 42 of Law No. 75/99 shall be amended as follows:

– the showing of their television programs in places where entrance is permitted upon payment of an entrance fee, provided, such showing is with the authorization

of the authors, producers, or performers whose works, phonograms, or performances are shown in such programs;

ARTICLE 26: Article 43 of Law No. 75/99 shall be amended as follows:

Producers of sound recordings shall have the right to authorize or prohibit **the following**:

- **the broadcasting or communication to the public of their recordings, including making available to the public of their recordings, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;**
- **the** direct and indirect **reproduction in any manner or form**, copying, **sale**, as well as the **commercial rental, or other transfer of ownership** of such recordings ~~for commercial purposes.~~

ARTICLE 27: Article 44 of Law No. 75/99 shall be amended as follows:

Performers shall have the right, during their lifetime, to claim **to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance** ~~authorship~~ of, and to object to any **distortion, alteration, mutilation or other** modification of, their performance **that would be prejudicial to their reputation**. This right shall pass to the heirs of the performer after his death.

ARTICLE 28: Article 48 of Law No. 75/99 shall be amended as follows:

The protection of related rights shall not affect any of the rights in respect of original and derivative works protected under this Law, **and vice versa**. Any interpretation of any of the rights granted under this Chapter shall not affect the rights of the original author, **and any interpretation of any of the rights under Chapter V shall not affect the rights of the holders of related rights**.

ARTICLE 29: In Articles 49 and 50 of Law No. 75/99, the number “50” shall be changed to “70.”

ARTICLE 30: Article 51 of Law No. 75/99 shall be amended as follows:

In the case of collective and audiovisual works, the term of protection shall be ~~95~~**50** years to be computed from the end of the year in which the work has been made available to the public or, failing such event **within 25 years from the creation of the work**, ~~120~~**50** years from the making of such work, to be computed from the end of the year in which the work has been completed.

ARTICLE 31: In Articles 52, 54, 56 and 57 of Law No. 75/99, the number “50” shall be changed to “95.”

ARTICLE 32: Article 54 of Law No. 75/99 shall be amended as follows:

All economic related rights of performers shall enjoy protection for a period of 50 years to be computed from the end of the year in which the performance has been carried out or fixed.

ARTICLE 33: Article 55 of Law No. 75/99 shall be amended as follows:

The term of protection granted to producers of sound recordings shall be 50 years, to be computed from the end of the year in which the **phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the** first fixation of sound on tangible material has taken place.

ARTICLE 34: Article 76 of Law No. 75/99 shall be amended as follows:

Works, sound recordings, performances, and radio or television programs shall ~~may~~ be deposited with the Intellectual Property Protection Office at the Ministry of Economy and Trade.

Without prejudice to the provisions of Articles 11 and 35, tThe deposit shall **also** constitute a presumption as to the ownership by the depositor of the work **or object of related rights**, ~~the sound recording, the performance or the radio or television program.~~ Such presumption may be refuted by all available means.

ARTICLE 35: Article 82 of Law No. 75/99 shall be amended as follows:

The judge of expedited matters, the president of the court of first instance or the public prosecutor may temporarily seize **goods they have found to be infringing, material constituting evidence of an infringement of copyright or a related right, materials and implements relevant to the act of infringement, and documentary evidence relevant to the infringement** and shall leave it in the custody of the defendant. **They may also order the infringer to provide, for the purpose of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution.**

ARTICLE 36: Article 84 of Law No. 75/99 shall be amended as follows:

Any person who infringes copyright or a related right shall be required to pay fair compensation to the right holder **adequate to compensate** for the material or moral injury and damage incurred. The amount of such compensation shall be determined by the court based on the commercial value of the work, **measured by the market price, the suggested retail price, or other legitimate measure of value submitted by the right holder,** the damage and lost profit incurred by the right holder and the material profit realized by the infringer. The court may order the seizure of the subject matter in dispute and the equipment and devices used to commit the infringement. **The court may also order that the prevailing party shall be awarded payment by the losing party of court costs or fees, and reasonable attorney's fees. At the election of the right holder, pre-established damages shall be available in lieu of damages or**

an account of profits, in a sum of not less than LBP 300,000 to LBP 13 million for each work or subject-matter in respect of which the copyright has been infringed; and up to not more than LBP 64 million per work where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully.

ARTICLE 37: A new Article 84A shall be added to Law No. 75/99 as follows:

84A. (1) Any person who knowingly, or having reasonable grounds to know, circumvents without authority any technological protection measure that controls access to a protected work, performance, phonogram, or other subject matter, or protects any copyright or any related rights shall be liable, independent of any infringement of copyright or related rights, and subject to the provisional, civil and criminal remedies set out in this Chapter.

(2) Any person shall be liable, independent of any infringement of copyright or related rights, and subject to the provisional, civil and criminal remedies set out in this Chapter, who manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in any technology, device, product, or component, or offers to the public or provides services, that:

– are promoted, advertised, or marketed by that person, or by another person acting in concert with, and with the knowledge of, that person, for the purpose of circumvention of any effective technological measure;

– have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

– are primarily designed, produced, or performed for the purpose of measure.

(3) Nothing in this Article shall require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate Article 84A(1) or (2).

ARTICLE 38: A new Article 84B shall be added to Law No. 75/99 as follows:

84B. Any person shall be liable, independent of any infringement of copyright or related rights, and subject to the provisional, civil and criminal remedies set out in this Chapter, who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

– removes or alters any rights management information;

– distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or

– distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority.

ARTICLE 39: The chapeau of Article 85 of Law No. 75/99 shall be amended as follows:

Irrespective of whether the work has fallen into the public domain or not, shall be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP ~~105~~ to ~~10050~~ million, any person who:

ARTICLE 40

The first two paragraphs of Article 86 of Law No. 75/99 shall be amended as follows:

Any person who, knowingly and **on a commercial scale**~~with intent to make a profit~~, infringes or attempts to infringe copyright or related rights provided for in this Law shall be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP ~~105~~ to ~~10050~~ million. **For the purposes of this law, “commercial scale” shall be understood to include significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain, as well as willful infringements for purposes of commercial advantage or private financial gain.** The sanction shall be doubled in the event of a repetition of the offence.

The competent court may order the closure of the premises, the commercial establishment or the radio or television station that infringes copyright for a period varying from one week to one month, **the seizure of suspected infringing goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, any assets traceable to the infringing activity,** and the destruction of all unauthorized copies and all the equipment and the devices used to produce such copies. The court may also order that its decision be published in two local newspapers at the expense of the defendant.

ARTICLE 41: Article 87 of Law No. 75/99 shall be amended as follows:

Any person who manufactures or imports for purposes of sale or rental, offers for sale or rental, possesses for the purpose of sale or rental, sells, installs or rents any device, equipment or machine manufactured in whole or in part to receive illicitly any radio or television broadcast or transmission destined to that section of the public that receives the said broadcast or transmission on payment of a set fee, shall

be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP ~~105~~ to ~~10050~~ million. The sanction shall be doubled in the event of a subsequent offence.

ARTICLE 42: Article 88 of Law No. 75/99 shall be amended as follows:

Any person who arranges or facilitates for third parties the reception of the transmission or broadcast referred to in the previous Article shall be liable to imprisonment for a term varying from one month to three years and/or to a fine varying from LBP ~~105~~ to ~~10050~~ million. The sanction shall be doubled in the event of a subsequent offence.

ARTICLE 43: Article 91 of Law No. 75/99 shall be amended as follows:

It shall be strictly prohibited to import, **export**, consign to a warehouse or a free zone or transit sound recordings, **fixed performances**, or works that are **unauthorized copies or** imitations of sound recordings, **fixed performances**, or works enjoying legal protection in Lebanon. Such sound recordings, **fixed performances**, and works shall be seized wherever they are found. **Procedures to enable a right holder who has valid grounds for suspecting that the importation of unauthorized copies of sound recordings, fixed performances, or works may take place, to lodge an application for the suspension by the customs authorities of the release into free circulation of such goods, shall be as provided for in other laws or implementing regulations. The remedies provided for in Article 82 shall be available against unauthorized copies under Articles 91-96.**

ARTICLE 44: Article 92 of Law No. 75/99 shall be amended as follows:

a. The first paragraph shall be amended as follows:

The persons mentioned below shall have authority, **on an ex officio basis**, to identify, inventory and sample suspect objects. These persons shall be: police and customs officers and employees of the Intellectual Property Protection Office sworn in to that effect. These employees shall perform their duties pursuant to an order or a mandate issued by the public prosecutor or the Intellectual Property Protection Office and they shall notify the Office of all violations of the provisions of this Law that come to their attention. Sworn-in employees of the Intellectual Property Protection Office shall have police powers with regard to the implementation of the provisions of this Law.

b. The third paragraph shall be amended as follows:

The proprietor of the goods shall have the right to mention in the report all the information and reservations he deems necessary and to obtain copies of the report and inventory if an inventory has been drawn up separately. Civil action or penal proceedings must be filed with the competent court within ~~30~~**45** days of the date of the report, **unless the period is extended by the competent authority** ~~otherwise the whole operation will be considered as void.~~ **Consistent with and in**

addition to Article 82, where a positive determination has been made that the goods are infringing, the Intellectual Property Protection Office shall have the authority to inform the right holder of the names and addresses of names and addresses of the consignor, importer, exporter, or consignee, and provide to the right holder a description of the merchandise, the quantity of the merchandise, and, if known, the country of origin of the merchandise.

ARTICLE 45: The first paragraph of Article 93 of Law No. 75/99 shall be amended as follows:

The court may, at the request of the plaintiff and before rendering its final judgment order the seizure of all or some of the articles stated in the report and inventory. In such case, the court may order the plaintiff to deposit with the court, prior to the seizure, a reasonable guarantee fixed by the court, sufficient to protect the defendant and the competent authorities and to prevent abuse, and of an amount that shall not unreasonably deter recourse to these procedures~~based on the value of the articles to be seized.~~

ARTICLE 46: Article 95 of Law No. 75/99 shall be amended as follows:

The person whose goods have been seized must be provided with the following documents:

1. the order of seizure;
- ~~2. the document that establishes the deposit of the guarantee with the court if the court orders the deposit of such guarantee;~~
23. the inventory of the articles seized;
34. the report of seizure.

ARTICLE 47: Article 98 of Law No. 75/99 shall be amended as follows:

All works, phonograms and performances, whether published or not, created before the entry into force of this Law, shall enjoy the period of protection prescribed in this Law provided that they have not fallen into the public domain in their country of origin through the expiry of the term of protection by the effective date of this Law. The period of protection that has lapsed before the issuance of this Law shall be deducted from the period of protection provided for in this Law.

ARTICLE 48: Article 99 of Law No. 75/99 shall be deleted, Article 100 shall be renumbered “99” and Article 101 shall be renumbered “100”

ARTICLE 49: This law shall enter into force on the day of its publication in the Official Gazette.

SECTION 2

EXPLANATORY MEMORANDUM (ASSBAB MOUJIBA) TO THE DRAFT LAW AMENDING THE LAW ON THE PROTECTION OF LITERARY AND ARTISTIC PROPERTY, NO. 75 OF APRIL 3, 1999

2.1 GENERAL

The 1999 enactment of the Law on the Protection of Literary and Artistic Property, No. 75 of April 3, 1999, marked the beginning of the modernization of Lebanon's copyright system. As of that time, most members of the World Trade Organization were already members of the 1971 Paris text of the Berne Convention, and had already brought or were in the process of bringing their substantive laws into compliance with the Trade Related Aspects of Intellectual Property Rights Agreement (the TRIPS Agreement). In addition, the Internet had exploded as a medium for legitimate electronic commerce but also for significant (and growing) online infringement, so members of the World Intellectual Property Organization had, in 1996, agreed upon two treaties, the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), to properly protect copyright in the digital environment. Lebanon's 1999 law addresses some, but not all, of the elements of the 1971 Paris text of the Berne Convention (Lebanon is currently a member of the Rome 1928 text), TRIPS and as well as the two WIPO Treaties.

In respect of the foregoing, it is deemed necessary for Lebanon's 1999 Law to be further modernized and brought into full compliance with TRIPS as well as the WCT and the WPPT, which Lebanon acceded to in early 2010. It is also understood that, by separate legislation, Lebanon will seek to accede to the 1971 Paris text of the Berne Convention, to bring its international treaties status up-to-date.

To summarize, the amendments' achievements include the following:

1. Ensure the modernization of definitions and full compatibility with TRIPS, the WCT and WPPT.
2. Ensure the protection of "computer programs" consistent with the TRIPS Agreement and the WCT.
3. Ensure 1971 Paris text Berne Convention and TRIPS compatible "presumptions."
4. Ensure proper point of attachment for works, performances and phonograms.
5. Ensure no confusion between the coverage (and definitions) of "communication to the public" versus "broadcast."
6. Ensure appropriately tailored moral rights for authors (or performers) as envisaged in the Berne Convention (or WPPT), without impinging on other Berne (or WPPT) exclusive rights.
7. Ensure rights balanced with appropriate exceptions and limitations that involve special cases, do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right

holder, in line with the Berne Convention, the TRIPS Agreement, the WCT and the WPPT.

8. Ensure exclusive rights of authors and related rights owners compatible with the WPPT.
9. Ensure remedies provisions (civil, provisional, border, and criminal) compatible with the TRIPS Agreement.
10. Ensure compatibility with the WCT and WPPT regarding technological protection measures (Article 11 of the WCT and Article 18 of the WPPT) and rights management information (Article 12 of the WCT, and Article 19 of the WPPT).
11. Ensure retroactive protection consistent with the Berne Convention, the TRIPS Agreement, the WCT and WPPT.

2.2 ARTICLE BY ARTICLE

Article I

The addition in Article I of Law No. 75/99 of a definition of “performers” results in WPPT compatibility.

The deletion of “performance of work” results in removal of an unnecessary provision which could be the cause of confusion if left in; the definition of “public performance” that follows is more complete and ensures Berne Convention and TRIPS compatibility.

The amendment to the definition of “public performance” is necessary in light of the deletion of “performance of work” and to ensure that, for example, live dance performances and the showing of audiovisual works, are covered.

The amendment to the definition of “broadcasting” results in WPPT compatibility, and ensures no overlap with the concept of “communication to the public” with respect to interactive transmissions.

The deletion of the definition of “computer program” results in TRIPS and WCT compatibility.

The amendment to the definition of “phonogram/sound recording” results in WPPT compatibility.

The addition of a definition of “fixation” results in WPPT compatibility.

The amendment to the definition of “related rights” is a technical amendment resulting in WPPT compatibility and making the Law internally consistent.

The amendment to the definition of “producer of sound recording/phonogram” results in WPPT compatibility.

The amendment to the definition of “reproduction” results in WPPT compatibility.

The amendment to the definition of “publication” results in Berne Convention, WCT, and WPPT compatibility and includes a technical amendment to make the Law internally consistent. The amendment does not include mention of all “related rights” since, e.g., the very next paragraph excludes certain acts related to such rights from being understood as “publication” and since some acts involving related rights, e.g., “broadcasts” are defined elsewhere.

The amendment to the definition of “communication to the public” results in WCT and WPPT compatibility.

The addition of a definition of “technological protection measure” results in WCT and WPPT compatibility.

The addition of a definition of “rights management information” results in WCT and WPPT compatibility.

Article 2

The amendment to Article 2 of Law No. 75/99 as to “computer programs” results in TRIPS and WCT compatibility. The additions in Article 2 of “applied art” and “works of architecture” result in Berne Convention and TRIPS compatibility.

Article 3

The amendment to Article 3 of Law No. 75/99 results in TRIPS compatibility.

Article 4

The amendment to Article 4 of Law No. 75/99 results in Berne Convention (Article 2*bis*) and TRIPS compatibility.

Article 5

The amendment to the title of Chapter III of Law No. 75/99 is a technical amendment.

Article 6

The amendment to Article 6 of Law No. 75/99 (OPTION A) results in a definition of joint work without encumbering or impinging upon the ability of joint authors to exercise their exclusive rights in works (which may implicate exclusive rights guaranteed by the Berne Convention, TRIPS, and the WCT). It establishes a duty to account for profits in case joint works are used or licensed as between co-authors.

The amendment to Article 6 of Law No. 75/99 (OPTION B) retains the default rule permitting any co-author from objecting to the exercise of copyright and dissemination of works, but provides that consent by one co-author for another co-author to exploit the work shall not be unreasonably withheld.

Article 7

The amendment to Article 11 of Law No. 75/99 results in Berne Convention, TRIPS and WCT compatibility. The amendment provides a Berne Convention, TRIPS, WCT, and WPPT compatible presumption of subsistence of copyright.

Article 8

The amendment to Article 12 of Law No. 75/99 results in point of attachment for authors on the basis of the WCT, and further confirms point of attachment for authors of works of architecture resulting in Berne Convention compatibility.

Article 9

The amendment to Article 13 of Law No. 75/99 results in point of attachment for all works on the basis of the Berne Convention, TRIPS, the WCT, or other treaties to which Lebanon is party.

Article 10

The amendment to Article 15 of Law No. 75/99 results in Berne Convention, TRIPS, and WCT compatibility.

Article 11

The amendment to Article 17 of Law No. 75/99 draws from the French law to safeguard the author while not unduly impinging on the rights of the parties to freely contract.

Article 12

The amendment to Article 18 of Law No. 75/99 results in a reasonable rule of contracting to avoid abuse without encumbering or impinging upon the ability of authors to freely contract with respect to assignment of their rights in works to be produced or completed at a future agreed-upon contract term.

Article 13

The amendment to Article 19 of Law No. 75/99 results in a clarification, likely technical, that contracts may involve more than one exclusive right.

Article 14

The amendment to Article 20 of Law No. 75/99 results in a clearer understanding of joint work and co-authorship rights in a song.

Article 15

The amendment to Article 21 of Law No. 75/99 results in appropriately tailored moral rights for authors as envisaged in the Berne Convention, without impinging on other Berne exclusive rights.

Article 16

The amendment to Article 23 of Law No. 75/99 results in a more appropriate personal and private use exception, apparently consistent with the Berne Convention, the TRIPS Agreement, and the WCT. The approach draws directly from Article 5(2)(b) of the “Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society,” OJ L 167 , 22/06/2001. A simpler alternative would be to restrict the private and personal copying without authorization or compensation to the right holder to “analog” copies such as those made by photocopier or other analog techniques. If the exception is to be understood as including digital reproductions, it must account for the fact that it will by necessity conflict with a normal exploitation of the work, and/or unreasonably prejudice the legitimate interests of the copyright holder. In such a case, care must be taken to ensure that copyright holders receive fair compensation for digital copying (see Recital 38 of the above-referenced EC Directive), and it must be ensured that protection of technological protection measures remains intact (see Recital 39 of the above-referenced EC Directive). The draft attempts to accomplish this and balance the interests appropriately between copyright holders and users in the digital environment.

Article 17

The amendment to Article 24 of Law No. 75/99 results in clarity with respect to appropriately narrow exceptions and limitations, in line with the Berne Convention, the TRIPS Agreement, the WCT and the WPPT. The amendment with regard to the recording or copying of a “computer program” ensures that the permitted use does not conflict with a normal exploitation of the computer program.

Article 18

The amendment to Article 25 of Law No. 75/99 results in Berne Convention, TRIPS, and WCT compatibility.

Article 19

The amendment to Article 32 of Law No. 75/99 results in Berne Convention and TRIPS compatibility.

Article 20

The amendment to Article 35 of Law No. 75/99 results in a lack of redundancy, since a definition of “performers” is provided for in amended Article I. The amendment also extends Berne Convention compatible presumptions and a presumption of subsistence to owners of and objects of related rights.

Article 21

The amendment to Article 36 of Law No. 75/99 results in point of attachment for producers of sound recordings on the basis of the WPPT or other treaties to which Lebanon is party, and results in point of attachment based on first fixation or first publication (as defined) in Lebanon or another country member of TRIPS, the WPPT, or a treaty to which Lebanon is party.

Article 22

The amendment to Article 37 of Law No. 75/99 results in point of attachment for performers on the basis of their nationality, if they are Lebanese, national of a state party to the Rome Convention, WPPT or other treaty to which Lebanon is party, and results in point of attachment based on performance in Lebanon or another country member of TRIPS, the WPPT, or a treaty to which Lebanon is party.

Article 23

The amendment to Article 38 of Law No. 75/99 results in point of attachment for broadcasting organizations on the basis of any treaty to which Lebanon is party.

Article 24

The amendment to Article 39 of Law No. 75/99 results in TRIPS and WPPT compatibility with respect to exclusive rights of performers.

Article 25

The amendment to Article 42 of Law No. 75/99 results in WPPT compatibility with respect to appropriately narrow limitations and exceptions.

Article 26

The amendment to Article 43 of Law No. 75/99 results in TRIPS and WPPT compatibility with respect to exclusive rights of producers of sound recordings.

Article 27

The amendment to Article 44 of Law No. 75/99 results in WPPT compatibility.

Article 28

The amendment to Article 48 of Law No. 75/99 results in no hierarchy with respect to rights of authors versus related rights owners.

Articles 29 through 31

The amendment to Articles 49 through 57 follow the international trend to extend term, thereby allowing Lebanese works to be treated equally to works in nations which grant term on the principle of reciprocity.

Article 32

The amendment to Article 54 of Law No. 75/99 results in TRIPS compatibility.

Article 33

The amendment to Article 55 of Law No. 75/99 results in TRIPS compatibility.

Article 34

The amendment to Article 76 of Law No. 75/99 results in Berne Convention and TRIPS compatibility, by ensuring the Berne Convention “no formality” principle is respected.

Article 35

The amendment to Article 82 of Law No. 75/99 results in TRIPS compatibility with respect to enforcement measures. The additional elements of “documentary evidence” and the ability to order “information” are TRIPS compatible and have proved to be extremely important to developing “effective action” under TRIPS Article 41.

Article 36

The amendment to Article 84 of Law No. 75/99 results in TRIPS compatibility. TRIPS contemplates the possibility of statutory damages, which are instrumental in many cases to ensure that compensation is “adequate” under TRIPS, particularly in cases in which copying or distributing product illegally is difficult to prove or where evidence has been destroyed. Lebanon’s per capita GDP (purchasing power parity) stands at 28.5% of the U.S. per capita GDP (\$13,100 versus \$46,000); the proposed amounts are 28.5% of the U.S. pre-established damage amounts.

Article 37

The addition of Article 84A to Law No. 75/99 results in WCT and WPPT compatibility with respect to technological protection measures.

Article 38

The addition of Article 84B to Law No. 75/99 results in WCT and WPPT compatibility with respect to rights management information.

Article 39

The amendment to Article 85 of Law No. 75/99 results in TRIPS compatibility. The maximum is based on 28.5% of the U.S. maximum in its criminal copyright infringement

statute, 18 U.S.C. § 2319, which corresponds to Lebanon's per capita GDP (purchasing power parity).

Article 40

The amendment to Article 86 of Law No. 75/99 results in TRIPS compatibility, particularly, Article 61's requirement to cover at least "commercial scale" piracy. The maximum is based on 28.5% of the U.S. maximum in its criminal copyright infringement statute, 18 U.S.C. § 2319, which corresponds to Lebanon's per capita GDP (purchasing power parity). The amendment to paragraph two results in TRIPS compatibility with respect to criminal seizure. Documentary evidence and asset seizure has proved to be particularly important in deterring infringement.

Article 41

The amendment to Article 87 of Law No. 75/99 results in TRIPS compatibility. The maximum is based on 28.5% of the U.S. maximum in its criminal copyright infringement statute, 18 U.S.C. § 2319, which corresponds to Lebanon's per capita GDP (purchasing power parity).

Article 42

The amendment to Article 88 of Law No. 75/99 results in TRIPS compatibility. The maximum is based on 28.5% of the U.S. maximum in its criminal copyright infringement statute, 18 U.S.C. § 2319, which corresponds to Lebanon's per capita GDP (purchasing power parity).

Article 43

The amendment to Article 91 of Law No. 75/99 results in TRIPS compatibility with respect to border measures, while recognizing the potential need for further elaboration in other laws or implementing regulations.

Article 44

The amendment to Article 92 of Law No. 75/99 results in TRIPS compatibility. *Ex officio* authority and information about consigned goods have proved to be important in seeking effective action from border officials.

Article 45

The amendment to Article 93 of Law No. 75/99 results in TRIPS compatibility.

Article 46

The amendment to Article 95 of Law No. 75/99 decreases the likelihood that procedures as to border measures will be "unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays" and thus ensures TRIPS compatibility.

Article 47

The amendment to Article 98 of Law No. 75/99 results in Berne Convention, TRIPS, and WPPT compatibility.

Article 48

This is a technical (renumbering) amendment.

Article 49

This provides the exact date on which the amendments will go into effect based on publication in the Official Gazette.